IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6532 OF 2005

Willingdon College, Sangli. ...Petitioner.
Vs.
Joint Director of Higher Education & Anr. ...Respondents.
....
Mr. A. M.Kulkarni for the Petitioner.
Mrs. M. P. Thakur, AGP for Respondent Nos.1 and 2.
.....

CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.
January 25, 2006.

P.C.

The College approached this Court seeking a prayer amongst others to direct the Respondents to forthwith pay an amount of Rs.5,71,137/- to the Petitioner towards the grant of salaries of teaching and non-teaching staff. These are amounts which were due and payable to one Smt.Yadav which the Respondents on failure of the management to pay had deducted from the maintenance grant of the Petitioner. It is not necessary to refer to the other reliefs.

2. We now set out the relevant facts for the purposes of

deciding the controversy arising in this petition. The Petitioner appointed Mrs. Yadav Usha Shrirang to teach Botany. Her services came to be terminated the reasons for which we need not go into. The said Mrs.Yadav preferred an appeal before the University and College Tribunal which by a judgment dated 10th April 2000 was pleased to allow the appeal and set aside the order of termination and issued further declaration that Mrs.Yadav was in continuous service of Respondent Nos.1 and 2 with effect from 1st December 1994 and Mrs.Yadav is a permanent and confirmed full time teacher in the College of the Petitioner and she is entitled to all benefits of a permanent teacher. Respondent Nos.1 and 2 in appeal were directed to reinstate Mrs.Yadav and pay her arrears of salary till the date of reinstatement. There was further direction which reads as under :

> "The Respondent No.5 - Joint Director of Higher Education directed to release salary grant of Appellant on her full time post of teacher w.e.f. 1-12-94 onwards."

3. The State represented by the Joint Director, filed a petition before this Court being Writ Petition No.3465 of 2000. After hearing the parties, by the order dated 19th December 2000,

the Learned Single Judge of this Court held that making a recommendation to the State Government is for making deduction from the grant payable to the University or the Management and the College Tribunal does not have power to direct the State Government or its officer to release the salary grant of any particular teacher. The Learned Single Judge then observed as under :

> "Thus, that part of the order made by the College Tribunal is patently beyond the jurisdiction of the College Tribunal."

4. Mrs.Yadav aggrieved by the said order, preferred an appeal being L. P. A. No. 66 of 2002 in Writ Petition No.3465 of 2000. The Learned Bench of this Court after considering the provisions of Section 61(3) of the Maharashtra Universities Act, 1994 was pleased to hold that the Tribunal can only issue a recommendation and not a direction. While disposing of the appeal, it was held as under :

> "..... Directions issued by the Tribunal is ordered to be treated as recommendation under sub-section (3) of Section 61 of the Act."

5. From the above, it is clear that the findings recorded by the Tribunal that Mrs.Yadav is a permanent and confirmed full time teacher and entitled to all benefits of a permanent teacher and reinstatement were not interfered with. In fact, in the judgment of the Tribunal in paragraph 6, the Tribunal has specifically held that there was workload of two full time posts of Lecturer in Botany from Academic Year 1994-95 to Academic Year 1997-98. There was also a further finding that the Joint Director of Higher Education has no right to disallow the salary grant of the Appellant as the University has approved her workload for full time post.

6. It appears that the Petitioner herein did not pay the back wages and salary of Mrs.Yadav, whereupon the Respondents deducted the same from the maintenance grant of the Petitioner. It is in these circumstances, the present petition has been filed.

7. On behalf of the Respondents a reply has been file by Vasant S. Jadhav, Administrative Officer, office of the Joint Director, Higher Education, Kolhapur Region, Kolhapur. It is not necessary to advert to various averments except to point out that the stand of the Respondents is that the appointment of Mrs.Yadav

was made by the Principal and the Management illegally on non-grant post and in these circumstances, the question of payment of salary of Mrs. Yadav by Respondent No.1 does not arise and as such it is the management who has to pay the salary of Mrs.Yadav from the management funds. It is further set out that the Respondents were further directed to act under clause 61(3), which direction was followed and executed. In brief, the contention of the Respondents in reply is that Mrs.Yadav was not entitled to be appointed on a full time basis or on a regular basis and consequently, no grants are permissible and as such on the failure of the Petitioner to pay the salary of Mrs.Yadav, the Respondents were within their jurisdiction in terms of the directions to make deduction from the maintenance grant and pay the salary of Mrs.Yadav.

8. We have earlier noted the findings of the Tribunal and the orders of the Learned Single Judge and the Division Bench of this Court. From the said orders, it is clear that the finding that Mrs.Yadav was appointed against a regular vacancy and the appointment was approved by the University has not been set aside. Once the appointment of Mrs.Yadav was against the full

time post and the appointment was approved by the University, it necessarily contemplates that the appointment was in accordance with law. Once the appointment is against the full time post and according to law, the Respondents are bound to release the salary. The judgment of the Division Bench of this Court also held that the directions issued by the Tribunal must be considered in that context which would mean that the State Government had to consider releasing of the grant for the post held by Mrs.Yadav as it was an approved post. The direction was not to the Respondents to deduct from the maintenance grant of the Petitioner management. That was wholly contrary to the express findings of the Tribunal and directions as confirmed by this court.

9. Considering the above, the Petition has to succeed and in the light of that, made absolute in terms of prayer clauses (a), (b) and (c). In the facts and circumstances of the case, there shall be no order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)